

**STATE OF NEBRASKA**

**STATE RECORDS ADMINISTRATOR**

**ELECTRONIC MESSAGING AND ELECTRONIC MAIL (E-MAIL) GUIDELINES**

**MARCH 2003**

Following is a voluntary guideline issued by the State Records Administrator (Secretary of State) for use by state and local government agencies in the State of Nebraska. This is a guideline only and does not have the force and effect of rule and regulation or of law. Realizing the potential budgetary impact should these guidelines be made mandatory, the State Records Administrator has chosen not to reissue this guideline as a mandatory rule and regulation at this time. However, The State Records Administrator strongly recommends that this guideline be followed in the development of any new e-mail systems and applied to existing e-mail systems as resources allow.

This office needs your input. Please use the "Comments" form to submit your comments, recommendations and questions. If you would prefer faxing your comments/questions, our fax number is (402) 471-2406.

# **State of Nebraska**

## **State Records Administrator**

### **Electronic Messaging and Electronic Mail (E-Mail) Regulations**

**March 2003**

#### **001 Scope and Purpose**

**001.01 Scope.** These guidelines apply to all state and local government agencies in the State of Nebraska as defined in the Records Management Act (Revised Statutes of Nebraska, Chapter 84, Article 12). The term "agencies" means state and local government agencies.

**001.02 Purpose.** These guidelines do not require agencies to create, send, communicate, receive, store, preserve, or otherwise process records by electronic means or in electronic form. Rather, they provide guidance for agencies that choose to use the technologies for these purposes.

#### **002 Definitions**

**002.01 Record.** The Records Management Act (Revised Statutes of Nebraska, Chapter 84, Article 12) defines a record as: "any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business." A record is information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**002.02 Public record.** The Records Management Act (Revised Statutes of Nebraska, Chapter 84, Article 12) defines a public record as follows: "Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files."

**002.03 Electronic record.** A record created, generated, sent, communicated, received, or stored by electronic means.

**002.04 Electronic mail (E-mail).** A system that enables users to compose, transmit, receive and manage text and/or graphic electronic messages and images across networks and through gateways connecting other local area networks. This information consists

primarily of messages, but may include attachments such as calendars, directories, distribution lists, word processing documents, spreadsheets, and other electronic documents. Due to format, e-mail permits instant communication and transmittal of up-to-date information, similar to the telephone. Unlike current telephone features, e-mail creates a record of the information that is being transmitted.

**002.05 Electronic messages.** Any communication using an electronic system for the conduct of official business internally, between other state and local government agencies, and with constituents, voters, vendors, clients, citizens, and others in the outside world. These messages may be in the form of e-mail, electronic document exchange (electronic fax), and electronic data interchange (EDI). In these regulations, the terms electronic messages and e-mail are used, depending on the context, to mean the same thing.

**002.06 Electronic recordkeeping system.** An electronic system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

**002.07 Record copy.** A single copy of a record retained by its custodian as the official record of a government transaction and in accordance with the appropriate records schedule. All other copies are duplicate copies, held for convenience, and may be destroyed.

**002.08 Records retention schedule.** A listing of approved records retention periods governing the retention and disposition of all government records.

**002.09 Transmission data.** Information in electronic messaging systems regarding the identities of sender and addressee(s), and the date and time messages were sent.

**002.10 Receipt data.** Information in electronic messaging systems regarding date and time of receipt of a message, and/or acknowledgment of receipt or access by addressee(s).

**002.11 Records Management Application.** Software used by an organization to manage its records. Its primary management functions are categorizing and locating records and identifying records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository.

### **003 Basic Principles**

**003.01 Electronic messages should be handled as records.** Electronic messages transmitted through a government system are records and as such are subject to management under the Records Management Act, just as other types of media are subject to this act. Electronic messages with on-going record value may convey information on programs, policies, decisions, and essential transactions; may document oral exchanges such as meetings or telephone conversations during which policy was discussed or

formulated, or may document planning, discussion or transaction of other business activities. The major task is determining when records need to be retained and when they should be discarded. This means determining which electronic messages require long-term retention, determining who is responsible for making this decision, and establishing storage and disposition requirements for electronic messages.

**003.02 Electronic messages, in and of themselves, are not a single record series.** The electronic messaging system is a means of transmitting messages. Electronic messaging is identical to regular postal mail that must be sorted. The electronic messaging system contains some important materials that will become records, some transitory items that can be quickly destroyed, some unwanted and unneeded "junk" mail, some "personal" mail for employees, and other types of mail that must be identified, sorted, analyzed, and acted upon appropriately.

**003.03 There is no single retention period for all electronic messages.** Retention and disposition of electronic messages depends on the function and content of the individual message. Thus, a universal rule that all electronic messages will be deleted after a defined period is not a comprehensive solution to managing electronic messages. The various types of electronic messages require various retention periods - whether of a long-term or more ephemeral nature.

**003.04 The use of electronic messaging is more important than the medium.** Electronic messages can be very informal, and yet provide an easy method for distributing information to others. The value and appropriate treatment for each electronic message is only determined when both the use and content of an individual message are clearly understood.

**003.05 The end-user manages electronic messages.** Electronic messages should be managed at the end-user's desktop rather than from a central point. Each end-user -- anyone who creates or receives electronic messages -- is responsible for managing records that are part of his or her electronic messaging system.

#### **004 System Selection and Implementation.**

**004.01 Documentation.** Government entities may be responsible for establishing the validity and accuracy of their electronic messaging systems in court; legal admissibility will largely depend upon the quality of the documentation available for the system in use and the care and preservation of the electronic records produced.

**004.02 Documentation files.** Documentation files should: identify system hardware and software; formalize file naming conventions, back up and security procedures; identify the sources and use of the information, as well as their confidential and non-confidential status; and outline quality control procedures and storage requirements. Documentation should also cover employee training procedures and the verification of employee attendance at training sessions.

**004.03 System features.** All features of electronic messaging systems, including messages, calendars, directories, distribution lists and attachments such as word processing documents should be evaluated to identify the documentary materials that satisfy the definition of a record. For example, some electronic communication systems identify users by codes or abbreviated names and others identify the recipients of communication only by the name of a distribution list. With these systems, directories or distribution lists should be retained to ensure identification of the sender and addressee(s) of messages that are records.

**004.04 Agency responsibilities.** Agencies are responsible for ensuring that employees are familiar with the legal requirements for creation, maintenance, and disposition of records on electronic messaging systems. Because records may be created or received via an electronic messaging system, each agency using electronic messaging should provide records management training and guidance for employees that include criteria for determining which electronic messages should be retained.

## **005 Proper use**

**005.01 Official use.** Electronic messaging within Nebraska government should be used for official business only. Agencies may set the same limitations on personal use of electronic messaging that exist for telephone, fax, and personal mail.

**005.02 Non-discrimination.** Electronic messaging should not be used to promote discrimination on the basis of race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference; promote sexual harassment; or to promote personal, political, or religious business or beliefs.

**005.03 Reading other people's electronic messages.** No official or employee should read electronic messages received by another employee when there is no business purpose for doing so.

**005.04 Using another person's name.** No official or employee should send electronic messages under another employee's name without authorization.

**005.05 Altering electronic messages.** No official or employee should change or alter any portion of a previously sent electronic message without authorization.

## **006 Access**

**006.01 Electronic messages as public record.** Information created or received in electronic messaging systems is a public record subject to public inspection and is not confidential, unless specifically cited by statute.

**006.02 Public access.** Requests for access to non-confidential electronic messages should be treated in the same manner as requests for other public records. The difficulty of

retrieval is not a legitimate reason to deny access. Throughout the retention period, electronic messages should remain reasonably accessible.

**006.03 Standardized filing.** Electronic messages should be systematically filed for convenient retrieval following standardized filing rules within the government entity. Electronic messages should be indexed in an organized and consistent pattern, and reflect the way the files will be used and referenced. Electronic messages maintained electronically have the potential advantage of supplying multiple access or index points.

## **007 Retention and disposition**

**007.01 General.** Electronic messages sent and received by public officials fall within three broad categories: (1) transitory messages, including copies posted to several persons and casual and routine communications similar to telephone conversations; (2) records with a less than permanent retention period; and (3) records with a permanent retention period. An electronic recordkeeping system should be able to separate messages into these three categories.

**007.02 Transitory messages.** There is no retention requirement for these messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval of the State Records Administrator.

**007.03 Less than permanent retention.** These records are governed by the retention period for equivalent hard copy records as specified in an approved records retention schedule. The records should be in hard copy or electronic format which can be retrieved and interpreted for the legal retention period. Public officials and employees creating or receiving such communications may delete or destroy the records only according to an approved retention schedule.

## **007.04 Permanent/archival retention**

**007.04.01 Transfers to the Nebraska State Historical Society (NSHS).** The NSHS is responsible for the care, maintenance and reference use of state records with enduring value, regardless of media. The NSHS will accept electronic records of permanent value that are scheduled for transfer to the Society, or it will work with the agencies in preserving and accessing electronic records maintained in agency custody. Because of the variety of formats of electronic records, issues of proprietary software and specialized hardware, decisions should be made in consultation between the NSHS staff, the agency staff, and the State Records Administrator about either transferring the records or maintaining them in the agency of origin. If the transfer decision is made, the method, frequency and format of the transfer should be determined cooperatively by the agency, the NSHS staff, and the State Records Administrator.

**007.04.02 Non-transfers.** If the decision is made to maintain the records in the agency of origin, the agency should be responsible for making the records accessible to the public in a manner consistent with the way the NSHS would perform this function. The

originating agency should be responsible for upgrading the system to current technology standards so that data remain usable over time and for testing at regular intervals any storage medium used for accuracy or loss of data.

**007.05 Backup copies.** Information systems managers routinely back up servers and the back up media are recycled on a timetable. It is important not to rely upon this back up exclusively for electronic messages. If non-transitory electronic messages are to be filed electronically, information systems managers should be consulted and appropriate storage locations should be designated and users should be educated on classification and filing procedures so that the information will not be lost.

**007.06 Electronic storage.** Many computer systems have storage limitations, so that only 60 to 90 days of messages may be stored before operational problems are experienced. Electronic messages that should be maintained in electronic format past that time can be downloaded to some other magnetic or optical storage medium. The retention period for the particular series is the best indicator of which storage medium to choose.

**007.07 Analog storage.** Agencies that do not have the technical capability to maintain electronic messages for the full retention period in an electronic format should create an analog copy (paper or microfilm). Agencies with computers capable of maintaining electronic messages in an electronic format for the required retention may also decide that current agency use is best served by printing electronic messages to paper or microfilm. In addition to the content, the following information should be retained about each message: name of sender, name of recipient, date and time of transmission and/or receipt.

**007.08 Destruction.** All electronic messages should be disposed of in a manner that ensures protection of any sensitive, proprietary or confidential information. Magnetic recording media previously used for electronic records containing sensitive, proprietary or confidential information should not be reused if the previously recorded information can be compromised in any way by reuse.

**007.09 Use of Records Management Application (RMA) Software.** Agencies may use Records Management Application (RMA) software to manage records in digital form. RMA software categorizes and locates records and identifies records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository. Agencies should use RMA software that complies with DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Software Applications," as issued by the U.S. Department of Defense.